

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (MOU) is entered into as of the 12th day of August, 2002, among MONTGOMERY COUNTY, MARYLAND, 101 Monroe Street, Rockville, Maryland 20850, hereinafter referred to as "the County", CHEVY CHASE VILLAGE, 5906 Connecticut Avenue, Chevy Chase, Maryland 20815, an incorporated municipality of the State of Maryland, hereinafter referred to as "the Village", and THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, 6611 Kenilworth Avenue, Riverdale, Maryland 20737, hereinafter referred to as "The Commission."

WHEREAS, the County has the authority to acquire and maintain properties for use as public parks and/or open space within the boundaries of Montgomery County to promote the public health, safety and welfare; and

WHEREAS the County approved the Legacy Open Space Master Plan in July, 2001 ("Legacy Plan"); and

WHEREAS, certain property immediately adjacent to the Village, commonly known as the Wohlfarth Property and more particularly described in Schedule A, attached hereto and incorporated herein, hereinafter referred to as the "Wohlfarth Property", is being acquired by the County pursuant to the Legacy Plan for use as a public park; and

WHEREAS the Legacy Plan identified the Wohlfarth Property as a property that "represent[s] a rare opportunity to retain existing green open space". in an urban area (Legacy Plan p. 80); and

WHEREAS, the Village is a municipal corporation located in Montgomery County, Maryland and has the authority to acquire and maintain public parks to promote the public health, safety and welfare; and

WHEREAS, the County, The Commission and the Village intend to cooperate in the acquisition, operation and maintenance of the Wohlfarth Property upon and subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. The County is attempting to conclude a contract for acquisition of the Wohlfarth Property from its current owners.
2. The Village intends to contribute the sum of \$1,250,000.00 to the Purchase of the Wohlfarth Property. The Village's contribution is contingent upon being able to use at least \$311,605.15 in Program Open Space Funds as follows:
\$123,327.25 unencumbered account balance as of July 1, 2001; \$7,897.90 unspent funds from Newlands Park Development project (FY 1996); the balance of \$180,380.00 shall be allocated at \$18,038.00 per year, or such other amount as may be allocated, commencing in fiscal year 2003 through fiscal year 2012 or longer. The Commission shall retain the allocations described in this paragraph for Commission and/or County parkland acquisitions, determined by The Commission and County in their sole discretion. The Village's obligation to make a contribution of Program Open Space funds in any year is contingent upon allocation of those funds from Program Open Space in the amounts described in Section 3 above. In the event an allocation in the amount set forth above is not received for any year, the Village's obligation under this

Agreement to contribute Program Open Space funds shall be extended until the full \$311,605.15 is contributed.

3. The balance of the Village's contribution shall be made in accordance with the following schedule but is subject to annual appropriations which cannot be guaranteed at this time:

(A) \$200,000.00 within 30 days after settlement on the acquisition of Lots 4,5, 6, 7, 8 and 24 of the Wohlfarth Property.

(B) \$100,000.00 on or before the 15th day of July, 2003.

(C) \$100,000.00 on or before the 15th day of July, 2004.

(D) \$100,000.00 on or before the 15th day of July, 2005.

(E) \$100,000.00 on or before the 15th day of July, 2006.

(F) \$100,000.00 on or before the 15th day of July, 2007.

(G) \$100,000.00 on or before the 15th day of July, 2008.

(H) \$100,000.00 on or before the 15th day of July, 2009.

(I) \$38,394.85 or the outstanding balance, on or before the 15th day of July, 2010.

4. The County agrees to request that the Village annex the Wohlfarth Property into the Village immediately following the later to occur of 1) settlement on all of the Lots comprising the Wohlfarth Property and the Village's assurances to Ms. Rowland (occupant under the Estate for Years) that she will have no additional financial or other burdens or responsibilities with respect to Lot 21 as a result of the annexation, or 2) the Village's payment of \$300,000.00 pursuant to Section 3, above, to the County.

5. If House of the Temple Historic Preservation Foundation, Inc. and Trustee of the William Jarboe Wohlfarth Charitable Remainder Annuity Trust at any time exercise their Repurchase Option for some or all of the Wohlfarth Property, then the County will credit the Village with Open Space Allocations in an amount equivalent to Open Space funds actually contributed pursuant to Section 2 above and will reimburse to the Village an amount equal to all Village funds actually paid to the County pursuant to Section 3, above.

6. The Wohlfarth Property will be used in a manner consistent with the purposes identified in the Legacy Plan for the Wohlfarth Property. The Wohlfarth Property was selected for acquisition in accordance with the Legacy Acquisition Criteria established in the Legacy Plan, relevant portions of which are attached hereto.

7. The County and the Commission agree that the Property is to be managed by the Commission in accordance with the terms of the Agreement between the County and Commission dated May 24, 1972. Nothing in this Agreement is intended to limit or amend the provisions of the 1972 Agreement between the County and the Commission. The parties recognize that the acquisition of the Wohlfarth Property by the County will be subject to the reserved rights of Mildred Vernalie Rowland to reside at the subject property as provided for in the Estate for Years and modified by the Purchase Contract, attached hereto as Exhibits A and B, respectively. However, during such occupancy, neither the County, nor the Commission shall use the property for any purpose other than as provided in the Estate for Years as modified by the Purchase Contract. Upon the expiration of those rights, the property shall be put to a use that is consistent with the Legacy Plan.

8. The Commission and the Village will jointly prepare a management plan ("Management Plan") in accordance with the Legacy Plan and the acquisition goals as stated in the Legacy Plan for the Wohlfarth Property. Any change in use of the Wohlfarth Property will be subject to the Management Plan, as jointly amended from time to time by the Commission and Village. The Commission and Village may begin and conclude the Management Plan approval process during the Estate for Years.

9. The Commission shall be responsible for maintaining and operating the Wohlfarth Property and upon annexation to the Village, the Village shall provide municipal services to the Wohlfarth Property (e.g., police and refuse service, but not park maintenance or operations).

10. The Village shall have a right of first refusal in the event that the County determines to sell all or a portion of the Wohlfarth Property (other than a sale to the House of Temple Historic Preservation Foundation, Inc. and Trustee of the William Jarboe Wohlfarth Charitable Remainder Annuity Trust pursuant to its repurchase option under the contract). If the Village exercises its right of first refusal before it has paid the full \$1,250,000.00 required by Sections 2 and 3 above, its right of first refusal shall be contingent upon the payment to the County of all sums not yet paid. Any sums not paid shall be paid in full at settlement. The purchase price shall be 80% of the then current fair market value of the property to be sold. The Village will have 120 days following notice of a proposed sale to notify the County of its intent to exercise the right of first refusal. However, if during the months of July or August of any year, the County notifies the Village of its determination to sell all or a portion of the Wohlfarth Property, the Village will have respectively an additional 60 or 30 days to notify the County of its intent to exercise its right of first refusal. Title shall be good and marketable, subject to

encumbrances of record at the time the County purchases the Wohlfarth Property. Settlement shall occur within 60 days of the Village's notice of its intention to exercise the right of first refusal. If the Village does not exercise the right of first refusal provided herein and the County sells the Wohlfarth Property (other than a sale to the House of Temple Historic Preservation Foundation, Inc. and Trustee of the William Jarboe Wohlfarth Charitable Remainder Annuity Trust pursuant to its repurchase option under the contract), the Village shall receive the greater of 20% of the proceeds of the sale or be reimbursed the amount of money it has contributed or paid to the County. If the sale is for only some, but not all of the property comprising the Wohlfarth Property, the Village shall receive the greater of 20% of the proceeds of the sale or be reimbursed a sum of money equivalent to the amount of money it has contributed or paid to the County for the Wohlfarth Property multiplied by a fraction, the numerator of which shall be the area of the Wohlfarth Property being sold and the denominator of which shall be the total area comprising the Wohlfarth Property.

11. This MOU shall be applicable to the parties hereto, their successors and assigns.

12. All notices, requests, demands or other communications hereunder shall be in writing and deemed given (a) when delivered personally, with signed receipt of delivery, or (b) on the day deposited in the U.S. mail, by registered or certified mail, return receipt requested, postage prepaid, or (c) on the day deposited with a recognized overnight courier service which requires signed receipt of delivery (such as Federal Express). Notices and communication shall be addressed as follows (or to such other address as a party may, from time to time hereafter designate by notice given in accordance with this section).

If to the Village:

Village Manager
5906 Connecticut Avenue
Chevy Chase, Maryland 20815,

with a copy to:

David R. Podolsky, Esquire
Village Counsel
255 N. Washington Street, #500
Rockville, Maryland 20850

If to the County:

Chief Administrative Officer
Executive Office Building
101 Monroe Street
Rockville, Maryland 20850

with a copy to:

County Attorney
Office of the County Attorney
101 Monroe Street
Rockville, Maryland 20850

If to the Commission:

Executive Director
The Maryland-National Capital Park and Planning
Commission
6611 Kenilworth Avenue
Riverdale, Maryland 20737

With a copy to both:

William Gries, Property Acquisition Specialist
The Maryland-National Capital Park and Planning
Commission
9500 Brunett Avenue
Silver Spring, Maryland 20901

The Maryland-National Capital Park and Planning
Commission
Associate General Counsel

8787 Georgia Avenue
Silver Spring, Maryland 20910

13. If any provision of this MOU, or a portion thereof, or application thereof to any person or circumstances, shall, to any extent, be held invalid, inoperative or unenforceable, the remainder of this MOU, or the application of such provision or portion thereof to any other person or circumstances shall not be affected thereby.

14. This MOU shall be construed in accordance with the laws of the State of Maryland.

15. Any disputes hereunder shall be subject to good faith mediation.

16. This MOU may be amended, modified or terminated at any time by a declaration in writing, executed and acknowledged by the parties to this MOU or their successors or assigns. This MOU shall not otherwise be amended, modified or terminated.

[SIGNATURE PAGE ATTACHED]

IN WITNESS WHEREOF, the County, the Village and The Commission have
executed this MOU as of the date first set forth above.

APPROVED AS TO FORM AND LEGALITY.
OFFICE OF COUNTY ATTORNEY
BY Diane R. Jones
DATE 8/13/2002

APPROVED AS TO LEGAL SUFFICIENCY

MR
M-NOPPC Legal Department
Date 8/29/02

MONTGOMERY COUNTY, MARYLAND

By William L. Rooney
Bruce Romer
Chief Administrative Officer

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION


ATTEST:

By for Patricia Colihan Barney
Patricia Colihan Barney
Secretary-Treasurer

By Trudye Morgan Johnson
Trudye Morgan Johnson
Executive Director

CHEVY CHASE VILLAGE

By Jerry Schiro
Jerry Schiro
Village Manager

Shana R. Davis
 SHANA R. DAVIS
Notary Public
Prince George's Co., MD
My Comm. Exps. Feb. 2, 2005

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A map of the Potomac River region, showing the river and surrounding areas. The map includes labels for the Potomac River, Patuxent River, and Green River. It also shows major roads and green boulevards. The map is oriented with the river flowing from the top left towards the bottom right. The legend indicates that thin lines represent roads and thick lines represent green boulevards. The map shows a network of roads and green boulevards connecting various areas along the river. The Potomac River is the central feature, with the Patuxent River and Green River branching off to the right. The map also shows several small islands and peninsulas. The legend is located in the bottom left corner.

ROADS
GREEN BOULEVARDS

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Interim Reference Edition

RESOURCE CATEGORY #6: PROTECTION OF URBAN SPACES

OVERVIEW

Montgomery County has a strong tradition of establishing significant urban open spaces, creating green boulevards and providing regional parks. As Montgomery County continues to grow, the importance of these urban open spaces, green boulevards, and regional parks intensifies. Regional parks serve countywide needs for active recreation and conservation. Urban open spaces serve local neighborhood needs. These urban open spaces include parkland within existing neighborhoods.

In addition to regional parks and urban open spaces, several green boulevards serve to provide recognizable linear green areas. Major open spaces next to these green boulevards (e.g., the frontage of the National Institutes of Health) also helps to establish a unique character for both the green boulevards and the adjacent neighborhoods.

The combination of urban open spaces, green boulevards, and regional parks provides an important community building element within Montgomery County, and directly contributes to community livability and character. They have been obtained through direct purchase, transfer of sites from other agencies, and through the regulatory process and are held by public agencies.

EXISTING SITUATION

Urban Open Spaces - These open spaces establish important green areas and natural resources within existing neighborhoods. They are provided both through direct purchase of sites within existing neighborhoods, and transfer of publicly owned land. These sites include undeveloped land in private or public ownership within existing neighborhoods. Buffer areas located within neighborhoods and at the edge of central business districts establish a green area between high-density central business districts and the adjacent neighborhoods. Other privately owned sites include undeveloped sites located adjacent to existing stream valley parks.

Open spaces and natural resources owned by the public include several closed school sites. The primary challenge to protection comes from the private organizations including schools that need sites in existing neighborhoods. As improvements are provided, the existing users request to purchase these sites. Several of these sites have already been purchased. Retaining surplus school sites as public open space so that they can continue to serve as neighborhood green infrastructure is a significant challenge.

Green Boulevards - A green boulevard, for this plan, is defined as the environs of a major highway containing an emphasis on landscaping within the right-of-way and open spaces outside the right-of-way. The open spaces can be provided through private actions, public ownership, or some combination of the two. The designation of a green boulevard does not affect the transportation function of the major highway within the green boulevard. Green

boulevards provide both linear green space and in some locations serve as gateways to Montgomery County. They provide both a first impression of Montgomery County and serve to establish the character of the adjacent neighborhoods. Undeveloped open spaces that define these green boulevards also contribute to the character of these major thoroughfares and the adjacent neighborhoods. Open spaces alongside green boulevards can also provide an important buffer between commercial and residential uses.

Remaining undeveloped open spaces along these boulevards presently include land regulated by setback requirements, land purchased for parkland, and undeveloped land. Examples of these spaces provided through a deliberate County policy include purchase of Woodside Park next to the Silver Spring CBD and the creation of buffer areas located on the NIH property next to Wisconsin Avenue through the regulatory process. These open spaces are valuable resources worthy of protection.

Regional Parks - Regional parks play a key role in conserving natural areas, and in providing active and passive recreation opportunities. These large parks serve many more people than local parks and retain a large portion of the site for conservation. This large conservation space is what differentiates regional parks from the other large county-wide park category, recreational parks, which have a greater emphasis placed on the provision of active recreation opportunities. Characteristics of regional parks include:

1. Land mass over 200 acres
2. Reserve at least two-thirds of its acreage for conservation related purposes.
3. Provide a large range of active and passive recreational opportunities such as picnicking, fishing, hiking, and camping.

Montgomery County currently has five developed regional parks (over 7,800 acres). All of the existing regional parks include picnic and playground areas, trails, and nature centers. Two of these parks serve the lower County areas and also are unique in that they include athletic complexes and significant active recreation areas. Wheaton, the first regional park, was opened to the public in 1961. It has a large botanical garden and is easily reached by lower and eastern County residents. Cabin John serves the southwestern portion of the County. Many recreational facilities are provided including lighted tournament quality athletic fields, year-round tennis courts, ice rinks, trains and a carousel. The three parks serving the mid and northern County area have large amounts of conservation land and provide other types of recreational opportunities. All three of these regional parks have golf courses and Little Bennett also includes a campground. Black Hill and Rock Creek offer boating and other water oriented activities.

The challenge to providing regional parks is to identify the future need and establish appropriate locations before the large sites are developed. Finding land suitable for both active recreation and conservation areas needed for regional parks is also a challenge.

LEGACY OPPORTUNITY AREAS

Urban Open Spaces - Transfer or purchase of selected sites is needed to serve the local open space needs of existing neighborhoods. Criteria used to identify urban sites for Legacy Open Space include:

- A. Key open spaces along major highways.
- B. Vacant land within existing urban neighborhoods.
- C. Important urban natural areas, especially if they promote interconnection of the urban green infrastructure.

The master plan recommends that the following list of sites be included in Legacy Open Space:

- Bush Property, Bethesda
- Sligo Mill Property, Takoma Park
- Wohlfarth Property, Friendship Heights
- Clarksburg Triangle Property, Clarksburg
- Takoma Academy, Silver Spring¹²
- Maiden Lane Property, Bethesda¹²

In addition, the County currently owns many small urban open spaces that result from unutilized rights-of-ways, changed road alignments, closed schools or school properties that were never built. Remnants of subdivisions also constitute valuable open spaces for our urban neighborhoods. If the County proposes to sell any of these properties, they should be evaluated for protection through Legacy Open Space. The Legacy program will consider these and other opportunities in urban areas for their potential as neighborhood open space links – or green infrastructure – as they are identified. Land purchase criteria to consider include connectivity, community purpose and special natural or cultural resources.

Green Boulevards – This plan focuses on several green boulevards and a series of other key sites along major highways as follows:

1. **MD 355 (Wisconsin Avenue/Rockville Pike/Frederick Road)** - This highway began as a primary route to the western frontier. Existing markers that celebrate this role included the Madonna of the Trails located in the Bethesda CBD and the eighteenth century Washington, D.C. Boundary Marker located in Friendship Heights. Private sector efforts during the development of the area along MD 355 (Wisconsin Avenue) between the Friendship Heights CBD and the Bethesda CBD establish a positive character for the adjacent neighborhoods. To the north, the Clarksburg Triangle site is also an important green space along MD 355 near the future Clarksburg Town

¹² It is expected these properties will be purchased through other programs and funding sources. However, Legacy tools, including purchase, can be used to protect and preserve these properties.

Center.

2. *MD 97 (Georgia Avenue)* – This green boulevard continues to provide a major access into Washington, D.C. It defines the character for the neighborhoods between the Silver Spring CBD and Montgomery Hills as well as the neighborhoods between the commercial center of Wheaton, Glenmont and Olney.
3. *US 29 (Colesville Road and Columbia Pike)* - This green boulevard serves as a major connection between Baltimore and Washington, D.C. It also provides a first impression for the adjacent neighborhoods. Recent efforts to improve its character include the improvements to Colesville Road through the Four Corners area. Purchase of the WSSC parcel next to Northwest Branch has already occurred, providing opportunities to augment and reinforce the boulevard character.
4. *Other Key Sites and Green Boulevards* - The existing golf course located along New Hampshire Avenue next to the future site of the Food and Drug Administration is one example of a site that should be retained as open space. Connecticut Avenue from Aspen Hill to the District of Columbia is also an important green boulevard.

Regional Parks - There is a long-term need to identify a new regional park to serve future generations that includes active recreation opportunities as well as conservation areas. Although the PROS Plan indicates that countywide recreation needs will be met by current park proposals through the year 2010, a new regional park will be needed after that time. It should be located to serve the area, where the greatest expansion of County population is anticipated.

This plan recommends that a site selection process should be undertaken so that development doesn't preclude optimum site selection. The search process should include the following:

- Identification of high need areas
- Identification of undeveloped sites of 200 acres or more (greater than 350 acres is preferable)
- Evaluation of potential sites with respect to environmental opportunities and constraints
- Identification of suitable land for recreation purposes on the site
- Opportunities for connectivity to other public parkland or private conservation land
- Site constraints such as sewer and water, transportation network, adjacent

conflicting land uses, and potential safety concerns

- Community and user group input on potential sites
- Approved regional park guidelines described in the PROS Plan

ACQUISITION MECHANISMS

Urban Open Spaces - A variety of implementation mechanisms exist. Several of these sites will require purchase by the public. Opportunities to transfer existing publicly owned sites to permanent green space or historic resources status should also be considered if the property was not acquired to protect a significant resource identified by the Legacy Open Space Program. If existing private schools plan to relocate from existing publicly owned sites, these sites should be studied for possible inclusion in the Legacy Open Space Program. The main goal is to retain existing public sites in public ownership, and to preserve local open space and recreation opportunities. Instead of purchase by private organizations, the Legacy Open Space Program would implement a transfer of these sites to the M-NCPPC as leases expire and the school is no longer appropriate for private use. This transfer could be achieved either through direct transfer without cost or as a purchase.

Green Boulevards - The implementing mechanisms include a variety of techniques. Purchase of selected sites along major highways is one mechanism to establish the green boulevard concept in Montgomery County. Establishing regulations for setbacks, access, and landscaping provides another mechanism to improve the green boulevard. Finally, actions within the right-of-way, such as street tree planting and maintenance programs, can also improve green boulevards.

Regional Parks - Direct purchase of land is the primary strategy to provide an additional regional park. A purchase could also be combined with a gift of land or limited dedication.

OTHER SITES UNDER CONSIDERATION

Appendix D contains a list of sites that will be studied for inclusion in the Legacy Open Space Program. These and other new sites will be considered according to the processes for changing the classification of sites and adding new sites outlined in the previous section (see pages 23-28).

**RESOURCE CATEGORY #6
PROTECTION OF URBAN OPEN SPACES¹³**

Urban Open Spaces	OBJECTIVE	SIGNIFICANCE	COMMENTS
Regional Parks	Initiate site search to meet post 2010 need in County.	Provides active and passive open space necessary to serve the expanding population.	More than 200 Acres will be required. Move quickly; otherwise options lost as development encroaches.
Parkland in existing neighborhoods 1. Bush Property 2. Sligo Mill Property 3. Wohlfarth Property 4. Clarksburg Triangle 5. Takoma Academy ¹⁴ 6. Maiden Lane Property ¹⁴	Preserve existing undeveloped parcels in existing neighborhoods. Provide a transition between existing central business districts and adjacent residential neighborhoods.	These open spaces include some of the last remaining undeveloped parcels in the existing neighborhoods. They represent a rare opportunity to retain existing green open spaces	Include publicly owned sites to be studied as sites are considered surplus.
Green Boulevards Highest priority: MD 355 Georgia Avenue US 29 Other priorities: Connecticut Avenue	Create high quality green boulevards with special character along selected major highways.	These boulevards establish the initial impression of Montgomery County. They also serve to maintain and reinforce the existing character of the adjacent neighborhoods.	Primary Methods of Implementation: <ul style="list-style-type: none"> • Building setbacks achieved through regulatory review • Acquisition through dedication or purchase

¹³ Appendix D contains a list of sites that will be studied for inclusion in the Legacy Open Space Program. These and other new sites will be considered according to the processes for changing the classification of sites and adding new sites outlined in the previous section (see pages 23-28).

¹⁴ It is expected this property will be purchased through other programs and funding sources. However, Legacy tools including purchase can be used to protect and preserve this property.